?IN THE HIGH COURT OF JUDICATURE AT MADRAS
%DATED: 03/04/2008
*CORAM
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI
+W.P. No.4854 of 1998
#A.Muthukumaraswamy Chettiar
$Collector
!FOR PETITIONER : R.Yashod Vardhan
^FOR RESPONDENT : D.Geetha
:ORDER

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THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.4854 of 1998

A.Muthukumaraswamy Chettiar .. Petitioner
vs.
1. The Collector of Villupuram District,
Villupuram.

2. The Special Tahsildar,
Adi Dravidar Welfare,
Villupuram. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, as stated therein.
For petitioner : Mr.R.Yashod Vardhan,
Senior Counsel for Mr.K.Kannan

For respondents : Mrs.D.Geetha, Addl.G.P.

ORDER
The prayer in the Writ Petition is for issuance of a Writ of Certiorari, calling for the records of the first respondent relating to the Notification No.4.A, dated 13.1.1998 issued by the first respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 31 of 1978 and quash the said Notification in so far as it concerns the petitioner.
2. The lands comprised in S.No.140/2-B to an extent of 0.21.0 hectares, S.No.140/3-A to an extent of 0.36.0 hectares and S.No.146/3 to an extent of 0.20.0 hectares, to a total extent of 0.77.0 hectares belong to the petitioner. Originally, the land acquisition proceedings were initiated by issuance of Notification under Section 4(1) of the Central Act, by the Government Order, dated 28.10.1994, which was Gazetted on 7.12.1994. Thereafter, the publication in two newspapers in "Pirpagal" and "Makkal Kural" was effected on 9.12.1994 and 6.12.1994 respectively and local publication of Section 4(1) Notification was effected on 13.1.1995. Notice of enquiry under Section 5-A was issued to the petitioner and the enquiry was proceeded on 2.3.1995. While such enquiry was pending, by communication dated 24.8.1985 in Ref.No.K.Dis.I-3-36739/95, the Land Commissioner of the

Government of Tamil Nadu has advised the first respondent-Collector of Villupuram District to proceed with further land acquisition proceedings under the Tamil Nadu State Act 31 of 1978 as enabled under Section 22 of the Act.

3. The case of the respondents is, thereafter, the proceedings were initiated under the State Act, namely the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 31 of 1978. In the proceedings of the District Revenue Officer, Villupuram, dated 31.10.1997, the District Revenue Officer has directed the Notification for acquisition to be issued under Section 4(1) of the Act 31 of 1978 relating to the above said lands of the petitioner. As it is seen from the records, after 2.3.1995, date fixed for Section 5-A enquiry and there was no further proceedings except the proceedings of the District Revenue Officer, dated 31.10.1997, under which the District Revenue Officer has directed the publication of Section 4(1) Notification under the State Act. Consequent to that, the impugned publication has been effected in the District Gazette of Villupuram, dated 13.1.1998. It is not in dispute that this Notification under Section 4(1) has been issued by the District Revenue Officer, Villupuram.

4. It is the contention of Mr.Yashod Vardhan, learned Senior Counsel appearing for the petitioner that when originally, the land acquisition proceedings were initiated under the Central Act, after 1995, there was no further proceedings and thereafter, the petitioner was not aware of any other proceedings stated to have been initiated under the State Act. There was also doubt in the mind of the petitioner that the further proceedings stated to have been initiated under the said Act, were not relating to the properties of the petitioner. That apart, it is the contention of the learned Senior Counsel that even assuming otherwise, as per the State Act 31 of 1978, it is only the District Collector who has jurisdiction to issue the Notification under Section 4(1), after satisfying himself with the requirements of the land for the Harijan Welfare Scheme.

5. On the other hand, it is the contention of Mrs.D.Geetha, learned Additional Government Pleader appearing for the respondents that as per the provisions of the Tamil Nadu Act 31 of 1978, under Section 2(j), the term "prescribed authority" is defined as any authority or officer authorised by the Government by Notification. According to the learned Addl.G.P., the Government, by Notification, has authorised the District Revenue Officer and therefore, it cannot be said that the issuance of Section 4(1) Notification or consideration of the report by the Special Tahsildar for the purpose of issuance of Section 4(1) Notification, by the District Revenue Officer, is improper. It is also her contention that even under Section 16 of the Tamil Nadu Act 31 of 1978, there is a power on the part of the Tamil Nadu Government to delegate the functions with some conditions and in that Section, the Explanation makes it clear that for the purpose of that Section, the term "District Collector" also includes District Revenue Officer. Therefore, according to her, the District Collector's functions as per the Act, have been impliedly delegated to the District Revenue Officer and therefore, the signing of Section 4(1) Notification by the District Revenue Officer is not without jurisdiction. She has also produced the files relating to the land acquisition proceedings connected with the issue involved in this case.

6. I have heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the relevant files and gave my anxious consideration to the point involved in this case.

7. It is not in dispute that originally, in respect of the lands belonging to the petitioner, as stated above, the acquisition proceedings were initiated for the benefit of Harijans under the Central Act and after Section 4(1) Notification was issued and the enquiry under Section 5-A of the Central Act was commenced on 2.3.1995, it is the case of the respondents that on the advise of the Land Commissioner, in his letter dated 24.8.1985, the Government has invoked the provisions of Section 22 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 for the purpose of continuation from the stage of Section 4(1) Notification by treating Section 4(1) Notification of the Central Act as notice under Section 4(2) of the Tamil Nadu Act 31 of 1978. It is true that under Section 22 of the Tamil Nadu Act 31 of 1978, when the actions have been initiated under the Central Act, the State Government is entitled to proceed under the State Act by treating the Notification

issued under Section 4(1) of the Central Act, as a notice issued to the parties under Section 4(2) of the State Act 31 of 1978 and certainly, the State Government is entitled to proceed.
8. The point involved in this case is not as to whether the State is having power to proceed under the State Act, when the original acquisition proceedings were initiated under the Central Act, but it relates to the jurisdiction of the District Revenue Officer either to conduct enquiry or to issue the Notification under Section 4(1) of the Act.
9. The contention of the learned Additional Government Pleader appearing for the respondents that Section 16 of Act 31 of 1978 enables the Government to delegate the powers to the District Collector and the term "District Collector" in that Section is stated to include the "District Revenue Officer" also, does not hold good on the facts and circumstances of the case.
10. Section 16 of the Tamil Nadu Act 31 of 1978 reads as follows:
"16. Delegation of functions The Government may, by notification in the Tamil Nadu Government Gazette, direct that any power conferred or any duty imposed on them by this Act except the power to make rules, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged also by the District Collector.
Explanation.--For the purpose of this section "District Collector" shall include the District Revenue Officer."

11. A reading of the above said Section 16 makes it clear that the Government is empowered to delegate any power to the District Collector in such circumstances and under such conditions as specified in the Notification, be exercised by the Collector. It is only in respect of those powers which were specifically delegated to the District Collector under the Notification of the Government, the said District Collector performs the same, and it can also be performed by the District Revenue Officer on behalf of the District Collector. Section 16 does not supersede Section 4 of Act 31 of 1978. Section 4 of Act 31 of 1978 makes it very clear that the power to acquire the land especially to issue Notification under Section 4(1) vests only with the Collector. Section 16 applies only in cases where there is no specific provision enacted under the Act empowering the District Collector in respect of any other matters, whereas, under Section 4(1) of Act 31 of 1978, it is made clear that the District Collector either himself can conduct enquiry or otherwise, any one of his subordinate officers to conduct enquiry and in circumstances where any other officer authorised by him conducts enquiry as per Section 4(3)(b), such officer is authorised to submit a report to the District Collector with his recommendations and after receiving the report, the District Collector himself forms his opinion and it is only after the District Collector having satisfied that the lands are required for Harijan Welfare Scheme, he can proceed to notify under Section 4(1) of the Act.
12. Section 4(1) of the State Act 31 of 1978 reads as follows:
"4. Power to acquire land--(1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section."

13. It has been well settled by now that powers of the Collector under Section 4(1) of Act 31 of 1978, have to be exercised only by the District Collector and not by any other person. In the decision reported in 2002 (2) CTC 1 (The Land Acquisition Officer and Special Tahsildar (LA), vs. R.Manickammal), the First Bench of this Court presided over by Justice B.Subhashan Reddy, Chief Justice, as he then was, while dealing with the Central Act and the State Act regarding the land acquisition, has categorically held that while under the Central Act, the satisfaction to be arrived at for the purpose of acquisition, vests with the Government, under Act 31 of 1978, namely the State Act, the satisfaction has to be exercised only by the District Collector and none else than the District Collector has any jurisdiction to arrive at the conclusion regarding the issuance of Notification or necessity of the lands for the requirement of Harijan Welfare Schemes. Paragraph 3 of the said judgment reads as follows:

"3. Pursuant to the same, the Collector has initiated proceedings and issued draft notification under Section 4(1), which has been gazetted on 17.7.1997. Objections were raised against the acquisition and the Collector has made an enquiry into the same. The Collector has opined that the value of the land was high and prohibitive and it was not desirable to acquire the lands for the public purposes notified. But the Secretary to Government has intervened in the matter and issued a mandate to the Collector to go ahead with the acquisition, in spite of the report of the Collector to the contra. A question was raised before the learned single Judge challenging the jurisdiction of the Government to intervene on the ground that it was for the Collector to exercise the said power and the Collector having been satisfied that the lands should not be acquired, the Government ought not to have interfered in the matter."

14. The said view of the First Bench has been reiterated recently by a Full Bench of this Court, in the decision reported in 2006 (4) CTC 609 (Pari.R. vs. The Special Tahsildar, Adi-Dravidar Welfare, Devakottai). The Full Bench, presided over by Justice P.K.Misra, after analysing the entire case law on the issue and also the provisions of the State Act in comparison with the Central Act and also relying upon another judgment of Division Bench, presided over by Justice Markandey Katju, Chief Justice, as he then was, in the case of District Collector, North Arcot Ambedkar District, Vellore and another vs. Manickam, reported in 2005 (2) L.W. 199, by applying the Wednesbury's principles of law, held that under the State Act, it is only the District Collector, who is the competent authority to satisfy himself about the requirement of the land for Harijan Welfare Schemes and if any other Officer other than the District Collector has exercised such power, it is nullity in law. In fact, the Full Bench has also held that the satisfaction in the mind of the Collector and that reasons if any, communicated to the owner, must atleast find a place in the files maintained by the authorities either in the form of notes or otherwise, and if the Court is satisfied about the satisfaction of the Collector, no further order is necessary. The operative portion of the judgment of the Full Bench reads as follows:
"40. It is easier to answer question No.3. The learned Single Judge has referred to the Division Bench decision in The District Collector, North Arcot Ambedkar District and another v. Manickam, 2005 (2) LW 199. In the aforesaid decision, M.Katju, C.J., as his Lordship then was, speaking for the Bench observed:
"8. In the present case, it appears that the order of the District Collector was passed in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot approve of such kind of orders. It may be that the Special Tahsildar, who was authorised by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objections, as has been held in the Wednesbury case (see quotation above). Though we agree with the learned Special Government Pleader that if opportunity of hearing has been given by the person authorised by the District Collector under Section 4(2) of the Act (in this case the Special Tahsildar) it is not necessary for the District Collector to give a second opportunity of hearing, yet in our opinion the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his very valuable rights. The Collector need not write an elaborate order like a judgment of a Court of Law while rejecting the objections of the land owner, but he must at least in brief mention the reasons why he is rejecting the objections so that the land owner may have the satisfaction that his objections have been considered, and this Court also may be satisfied that the District Collector had applied his mind to such objections."

41. So far as the first part of the observation regarding the necessity for the District Collector to give second opportunity of hearing is concerned, such aspect has been dealt with while considering question Nos.1 and 2. However, so far as the latter part of the observation laying down the necessity of the District Collector to apply mind to the objection made by the land owners and to indicate the reasons, however brief the reasons may be, must receive our approval without much demur. In view

of the power of eminent domain the State obviously cannot be denied such right. However, right to land being a constitutional right recognised under Article 300-A of the Constitution, such right can be denied only in accordance with law. Law which provides for such acquisition of land obviously should stand the test of lack of arbitrariness as otherwise such law may fly in the face of Article 14 and may be Article 21. Even though the substantive right of the State to acquire land cannot be denied, such law providing for acquisition of land should satisfy the test of procedural reasonableness and it is therefore apparent that the authority acquiring such land (in the present case the District Collector) must be satisfied about the necessity to acquire such land and while arriving at such satisfaction, the authority is also required to consider the objections raised by the land owner. The authority must be alive to the requirement of balancing the need of the State as well as peculiar disadvantages to be suffered by the land owner. As observed by the Division Bench even though the authority is not expected to write "reasoned judgment", the materials on record must indicate that the authority has applied its mind. Obviously the magic incantations of the words used in the Act or the Rules would not indicate that mind has been applied and therefore, it is always desirable for the authority to indicate the reasons why such authority is taking a decision to acquire the land and rejecting the objection of the land owner. As a matter of fact, to be fair to the learned Additional Advocate General, he has stated in no uncertain term that the need to give reasons for the decision has to be read into the enactment. In the aforesaid context, the learned Additional Advocate General has also referred to the decision of a learned Single Judge of this Court in V.Kannian v. The Collector, Salem District, Salem and others, 2004 (3) MLJ 129. Therefore, in our opinion, the requirement to give reasons however brief the reasons may be, must be read into the provisions and this requirement is not merely confined to the cases where the Collector is considering the reports submitted by the authorised officer, but such requirement is also necessary while the Collector himself is dealing with the matter by holding an enquiry.

42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. ...."

15. Applying the judicial dictum laid down by hierarchy of judgments stated above, to the facts and circumstances of this case, it is clear that first of all, Section 4(1) Notification has been issued not by the District Collector, but by the District Revenue Officer in this case and on that ground alone, the land acquisition proceedings are liable to be set aside.

16. A reference to the entire files of the respondents shows that there is no reference about the application of mind on the part of the District Collector anywhere of consideration of the report of the Special Tahsildar and in the absence of such opinion formed by the District Collector and in the circumstances, Section 4(1) Notification itself has been issued not by the District Collector, but by the District Revenue Officer, who is not authorised to issue the same.

17. The Writ Petition stands allowed. Section 4(1) Notification impugned in this Writ Petition is set aside in so far as it relates to the petitioner. No costs.

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To

1. The Collector of Villupuram District,
Villupuram.

2. The Special Tahsildar,
Adi Dravidar Welfare,
Villupuram.